

SPECIAL
REPORT

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1989 STATE & LOCAL LEGISLATION to TAX OR RESTRICT PACKAGING MATERIALS

This is an update to the March 8, 1989 edition of the StateLine Special Report on 1989 State and Local Legislation to Tax or Restrict Packaging Materials.

Background

From the 1970s to 1986, nearly a dozen states passed litter control, recycling and solid waste disposal programs funded through a variety of assessments or taxes. Most of these taxes were levied on manufacturers, wholesalers or retailers of products deemed to contribute to the litter problem and were generally pegged at a percentage of price or a percentage of gross receipts attributable to these "litter-producing" items, which may include soft drinks, alcoholic beverages and newspapers, as well as cigarettes and other tobacco products. Other states' assessments were levied throughout the entire business community through income, sales or other business tax surcharges. Most of these state laws have since been repealed or replaced with "bottle bills" requiring refundable deposits on beverage containers.

In 1987, however, two new approaches to litter control, solid waste management and problems allegedly associated with use of certain chemicals in packaging materials began to take shape.

Legislation limiting the use of certain materials in containers and packaging was introduced in a number of states in 1987, but these early proposals were not of direct concern to the industry. However, Suffolk County, NY, considered an ordinance that year to ban use of all nonbiodegradable packaging materials in the county. The sponsor's real intent was aimed at fast-food "clamshells" and other containers made of styrofoam-like materials, but the measure was finally passed as a ban only on use of nondegradable plastic bags. A coalition of plastics companies filed suit against the County Executive in an effort to repeal the ordinance. In 1988, a similar ordinance to ban plastic bags was passed in Nassau County, New York.

New variations on the litter control tax have been proposed to tax "litterable" products on an ad valorem basis, or to tax the packaging materials, not the product itself, on a per piece or per pound basis. In 1987, such taxes were introduced in at least three state legislatures (New York, Oregon and Vermont); none passed.

In 1988, bills to tax containers or to restrict the use of certain packaging materials were introduced in ten states. Only one bill was passed (Florida); most were given only cursory consideration, or were quickly amended to limit the scope of affected products, removing tobacco products from the measure. The Florida measure, S1192, was enacted on June 24. It provides for a recycling quota of 50 percent by October 1992 for glass, plastics, plastic-coated paper, aluminum and other metals. If the quota is not met, retailers will be assessed an "advance disposal fee" of one cent per container. If the quota is still not met by 1995, the fee will climb to two cents per container.

No local-level packaging legislation that would affect the tobacco industry directly was considered in 1988.

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Hawaii Several measures have been introduced relating to the degradability of plastics packaging, particularly in food packaging and plastic bags. However, two House bills that originally related only to food packaging were amended to include all packaging and were passed by the House. H167 would now require that all packaging be degradable, reusable, recyclable or combustible. H171 would require that food and retail establishments notify customers in writing as to whether the packaging is or is not degradable, reusable, recyclable or combustible. These bills are pending in the Senate Agriculture Committee. A Senate bill, S196, that would have banned the sale by January 1991 of any product packaged or placed in any nondegradable packaging, did not meet the March 3 deadline for action and is therefore dead for 1989.

Illinois Representative Bowman has introduced H154, the "Container Fee and Deposit Act." H154 would impose a refundable "advance disposal fee" on certain containers that are not being recycled at a rate of at least 50 percent. The bill is pending in the House Energy, Environment and Natural Resources Committee.

Iowa In his "State of the State" message, Governor Branstad recommended comprehensive environmental legislation in 1989, including programs to ensure safe drinking water quality through groundwater protection, a reforestation program and a future ban on certain nonbiodegradable product and food packaging materials. In his Executive Order Number 36, Governor Branstad declared that state government will be a model for public and private sectors in Iowa in supporting the development, marketing and use of degradable products. His order bans a variety of nondegradable products according to a phase-in schedule beginning with CFC foam containers by July 1, 1989; garbage bags and foam containers by July 1, 1990; foam packaging materials by January 1, 1990; and disposable plastic containers by January 1, 1992. State agencies are directed to purchase degradable disposable products when those products are reasonably available and cost competitive. State agencies are directed to work with the Iowa Corn Promotion Board to help develop industry sources that provide degradable materials and products for use in disposable packaging products.

A study bill was introduced by Rep. Shultz, HSB200, that would ban the plastic can, require mandatory plastic container coding and would grant authority for further packaging curbs to a waste reduction bureau. The state Environmental Protection Commission would be authorized to impose disposal fees and rebates on nonrecyclable products and deposits on recyclable products by July 1991. The fees would terminate after five years unless the Commission determines that the funds are required to support the management of waste streams which have been identified for separation or special handling. Another measure, H282, which would levy a 4-cent tax on nondegradable bags, was passed by the House on March 31. H229, which would require state agencies to purchase biodegradable garbage liners, died in the House Energy and Environment Committee.

Indiana Senator Leising introduced legislation, S430, to require governmental bodies to procure degradable plastic products made with cornstarch whenever economically feasible. The bill was reported favorably by the Senate Environmental and Consumer Affairs Committee on February 23. It was passed by the Senate on February 28 and was referred to the House Environmental and Consumer Affairs Committee. It was reported by the committee on March 31 and is pending House floor consideration.

Maine Packaging tax legislation was introduced by Rep. Paradis, L25, to impose a three cent tax on the sale of each container used to package nonfood products and fast-food products, filled or unfilled, which is sold or supplied for resale at retail or as a container for a product for retail sale. Containers which have a refund value or deposit of at least five cents per container would be exempt from the tax. A hearing was held on the measure in the Joint Taxation Committee on February 14 and a work session was held on February 16. No further committee action has been taken. Rep. Ridley introduced legislation, L92, to establish an incentive for the use of packaging which is either recycled at a high rate or is made largely of recycled material. Packaging which does not meet these criteria would be subject to

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Nebraska The Natural Resources Committee held a hearing February 9 on the "Degradable Products Act," L325, introduced by Senator Hefner. The bill would promote the use of degradable plastics by banning the sale of "nondegradable" products -- retail garbage bags, plastic bags, ring connectors and other connecting devices, disposable personal care products and food containers -- over three years. The measure was reported by the Natural Resources Committee on March 15 and has been placed on General File.

New Hampshire H669, introduced by Rep. Malcolm, would prohibit the use of nonbiodegradable single-use plastic items. A hearing was held in the House Environment and Agriculture Committee on February 21; no further action has been taken. Another measure, H746, by Rep. Merrill, would impose a 4-cent disposal fee on containers made of aluminum, cloth, fiber, glass, metal, paper, paperboard, plastic, wood, any combination thereof, or any new material type not listed but used in the manufacture of containers. The manufacturer, wholesaler, seller, supplier, distributor or retailer of a container making the first sale to a container purchaser within the state shall be liable for and shall pay the fee to the state Revenue Department. Containers in the form of wraps or wrappers "necessary to protect and maintain a product's freshness, taste, color or hygienic integrity" are exempt. The House Environment and Agriculture Committee voted down the bill on March 9. The bill will be combined with deposit legislation and sent to a summer study committee. It is expected to be reconsidered next year.

New Jersey Three packaging tax measures, carried over to the 1989 session, A3014 and companion S2460 would impose a 2-cent tax on rigid containers with a capacity of more than six ounces. The Department of Environmental Protection would be authorized to exempt products for which there is no feasible or practical substitute container. S126 would impose a tax on "single use" items made of or packaged in polymeric or petroleum-based nondegradable materials, a rate of one percent of sales in the state.

S126 and S2460 were referred to the Senate Revenue and Finance Committee. The Committee developed a substitute based on the provisions of the two bills which would impose a two-cent disposal fee at the retail level on food and nonfood products packaged in containers with a capacity of more than six ounces. Three years after enactment, the fee would climb to four cents per nonexempt container. A hearing was held on the committee substitute on March 2 in the Revenue and Finance Committee. The measure was released from the Committee on March 2 and is pending Senate floor consideration. The earliest the bill could be given floor consideration is April 17.

Four other New Jersey bills to limit the use of nondegradable packaging materials also carried over to the 1989 session. They did not receive any consideration by the legislature in 1988. A659 would prohibit the sale of nonbiodegradable products or packaging materials commonly found as litter on beaches. The bill would allow exemptions for products that cannot be substituted with biodegradable materials. A2035 would prohibit the sale of products wrapped in polystyrene plastic or other petroleum-based nondegradable material; the Department of Environmental Protection could make exemptions where there is no feasible or practical substitute. S2566 would prohibit the retail sale or distribution of plastic containers and items marketed in a plastic container made, in whole or in part, of plastic or any other petroleum-based nonbiodegradable material routinely discarded after use or consumption. It would also prohibit the distribution or use of any plastic grocery bags by retail food establishments. S127 would prohibit sale of reusable plastic materials; exemptions would be allowed where there is no feasible alternative. The Senate bills are pending in the Senate Energy and Environment Committee and the Assembly bills are pending in the Assembly Solid Waste Management Committee.

The "Solid Waste Reduction Act," A4077, a 1989 introduction by Assemblyman Spadaro, would impose a three-cent tax on containers based upon the recycled materials content, biodegradability, reusability and the rate of recycling of the materials used in the production of the container. The bill also would ban single-use items or products which would include all containers, items and packaging constructed of polyvinyl chloride, polyvinylidene chloride, polypropylene, polystyrene, or transported in containers using plastic packaging materials. A4077 is pending in the Assembly Environment Committee.

Rhode Island H7030 by Rep. Henseleer would impose a waste disposal fee on manufacturers of packaged goods. S1294 by Sen. Goldberg would create a special commission on estimating a tax on "hard to dispose of" items. These bills are pending in the House and Senate Finance Committees, respectively. Another measure by Sen. Watson, S1308, would impose a 50-cent per gallon surcharge on nonbiodegradable plastic containers used for industrial purposes to be paid by the wholesaler. The bill has been temporarily tabled following a March 8 hearing in the Senate Special Legislation Committee.

Vermont H196 would impose a franchise tax on distributors and manufacturers of "litter stream" products in the state. The tax would be imposed upon each corporation subject to taxation in the state. H196 also would direct the governor to negotiate with other interested states to attempt to develop an interstate compact to provide disincentives to packaging that is not recyclable or biodegradable. The bill has been referred to the Natural Resources and Energy Committee. H404 by Rep. McCormack would impose a one cent packaging tax on consumer products with nonrecyclable packaging. The tax would be assessed at the retail level. The Natural Resources and Energy Committee reported the bill favorably on March 21. It has been sent to the House Ways and Means Committee.

Virginia House Joint Resolution 434 encourages the plastics industry to utilize cornstarch in its manufacturing process to render plastic products biodegradable. The resolution was approved by the House and Senate.

Washington During 1988, the Joint Select Committee on Preferred Solid Waste Management met to consider solid waste management options in order to make recommendations to the legislature in 1989. The committee drafted legislation that contains provisions for source separation and collection, incentives to encourage manufacturers to use recycled feedstock and recyclable packaging materials, and has developed plans for a public education effort. The committee chairman approached industry groups requesting voluntary action by the business community. The Food Marketing Institute is developing model packaging standards for voluntary use by makers of "house" brands. The committee is mandated to consider the feasibility of implementing a tax system to incorporate disposal costs into product prices. The Association of Washington Business is working closely with the committee on the packaging issues.

On January 25, H1481 was introduced by Rep. Chandler to regulate biodegradable plastic solid waste and prohibit the wholesale or retail sale of goods to consumers when nonbiodegradable packaging is used. The bill did not meet the March 15 deadline for committee action and is therefore dead for 1989. H1671, by Rep. Sprenkle, would establish a comprehensive solid waste management program focusing on recycling and source separation. H1671 would also establish a product packaging task force to make recommendations for reducing product packaging in the waste stream. H1671 was amended to include a four year moratorium on local ordinances banning any type of plastics or local packaging taxes. It was reported favorably by the House Environmental Affairs Committee on March 5 and passed the House on March 10. H1671 is pending Senate floor consideration. In addition, Senate Joint Memorial 8002, introduced by Sen. Metcalf, calls for the formation of a Western State Recycling Coalition. The measure would request that delegates from Alaska, Oregon, Idaho, California and Washington attend a meeting in August 1989 to draft an interstate recycling compact. The Resolution passed the Senate and is pending House floor consideration.

Wisconsin The State Legislative Council Subcommittee on Resource Recovery charged with drafting a comprehensive state recycling plan, voted February 28 to include a ban on plastic foam fast food containers and packaging materials by 1995. The subcommittee had already agreed to ban the landfill or incineration of plastic packaging, aluminum, glass or steel containers, corrugated paper or boxes, newspapers and white good items. The proposal also would discourage state purchase of single-use disposable material and requires whenever practical, the purchase of multiple-use durable products by the state. A "throw-away" fee would be imposed on all single-use packaging to be paid by wholesalers. Proceeds of the fee would be used to support recycling grant programs and education.

Related Issues

The St. Lawrence Starch Company, a Canadian-based corn wet miller company, is marketing a product called Ecostar, a corn starch derivative it claims, when added to plastics, renders them biodegradable when buried. Originally developed in Britain, Ecostar is widely used in film and bags in European countries where laws dictate biodegradable packaging. The company has plants in four U.S. states and in Quebec and Ontario. U.S. corn farmers have taken a keen interest in the issue.

The plastics industry's position is that the photo- or biodegradability of plastics is not the solution to landfill problems. According to the plastics industry, "plastics in landfills are currently not a problem; degradable plastics in a landfill could be."

Other Activities

The National Conference of State Legislatures, in conjunction with the U.S. Environmental Protection Agency and the American Society of Mechanical Engineers, is sponsoring a seminar entitled, "Managing Solid Waste: Options for State Legislative Action." The seminar will be held on June 14-15, 1989 in Breckenridge, Colorado. The deadline for preregistration is May 26, 1989. For more information contact the NCSE Seminars Department at (303) 623-7800.

The U.S. Environmental Protection Agency's Office of Solid Waste Municipal Solid Waste Task Force, created in 1988 to develop a strategy for improving the nation's management of municipal solid waste, issued its final report, *The Solid Waste Dilemma: An Agenda for Action*. The final report calls for a "systems" approach to managing municipal solid waste through the complementary use of source reduction, recycling, combustion and landfills. It also underscores the need for a fundamental change in the nation's approach to producing, packaging and disposing of consumer goods.

The Task Force has identified the following objectives for a national agenda for action to solve the municipal solid waste dilemma: increase the waste planning and management information available to states and local communities; increase effective planning by waste handlers, local communities and states; increase source reduction activities by the manufacturing industry, government and citizens; increase recycling by government and by individual and corporate citizens; reduce environmental and health risks from municipal solid waste combustion and landfills. According to the report, although EPA is not recommending the adoption of economic incentives such as packaging taxes, the Agency believes that they are potentially useful tools for further consideration. EPA will assess the efficiency of state and local taxes of products and packaging for their impact on reducing both the volume and toxicity of municipal solid waste. For a copy of the report, contact EPA's Office of Solid Waste in Washington, D.C.

The Coalition of Northeastern Governors (CONEG) identified solid waste management as a primary regional policy concern in March 1988. The members of CONEG are William O'Neill (CT), John McKernan, Jr. (ME), Michael Dukakis (MA), Judd Gregg (NH), Thomas Kean (NJ), Mario Cuomo (NY), Robert Casey (PA), Edward DiPrete (RI) and Madeline Kunin (VT).

At their annual conference in August, the Coalition announced its plans to seek ways to reduce the amount of waste in packaging. At the meeting, the Coalition created a Source Reduction Task Force led by Governors Kean and Kunin. The Task Force will make recommendations to the Governors region-wide, coordinating strategy to reduce the volume of packaging materials entering the waste stream and to increase the use of recyclable and non-toxic materials. Industry has been invited to work closely with the Coalition's Task Force in developing recommendations on opportunities for industry to voluntarily reduce packaging.